



U.S. Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868
Ben Franklin Station
Washington, D.C. 20044

February 3, 2025

BY ECF

Clifton Cislak, Clerk
District of Columbia Circuit Court of Appeals
E. Barrett Prettyman U.S. Courthouse and
William B. Bryant Annex
333 Constitution Ave. NW
Washington, DC 20001

Re: *N.S. v. Dixon*, No. 21-5275 (argument held September 26, 2024), Rule 28(j) Letter to Advise Court of Public Memoranda Relevant to Appeal

Dear Mr. Cislak,

We write to update the court on recent developments bearing on this appeal. One of the questions presented in this appeal is whether United States Marshal Service (USMS) has the authority to detain aliens for civil immigration violations in the Washington D.C. Superior Court, pursuant to an administrative warrant and detainer issued by Immigration and Customs Enforcement (ICE). Appellant, the USMS, argued it has such authority pursuant to two delegations issued in 1996 and 2002 by the Deputy Attorney General and Attorney General, respectively (the 1996 and 2002 Orders).

On January 22, 2025, the Acting Secretary of the Department of Homeland Security (DHS) made an additional delegation of authority to the USMS to act as immigration officers for the purpose of “[i]nvestigating, determining the location of, and apprehending, any alien who is in the United States in violation of Title 8, Chapter 12 or regulations issued thereunder.” On January 25, 2025, the Acting Attorney General consented to and approved of the conferral of authority made by the Acting Secretary. *See* 28 U.S.C. §§ 509, 510, 533 and 8 U.S.C. §1103.

The Secretary’s 2025 delegation, which expressly invokes 8 U.S.C. § 1103(a)(4), moots Appellees’ argument that the USMS lacks authority to detain aliens because the 1996 and 2002 Orders did not specifically invoke § 1103(a)(4). It also moots Appellees’ argument that the USMS lacks authority to detain aliens because the 1996 and 2002 delegations predate the Homeland Security Act of 2003.

Appellants hereby provide the Court with a copy of the two documents referenced herein.

Sincerely,

/s Elissa P. Fudim

ELISSA P. FUDIM

Trial Attorney

Department of Justice

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P.O. Box 878, Ben Franklin Station

Washington D.C. 20044

Counsel for Appellant

cc: Daniel Gonen, *Counsel for Appellee* (by ECF)

CERTIFICATE OF COMPLIANCE

I certify that the foregoing letter complies with the word limit of Fed. R. App. P. 28(j), in that the body of the letter is 257 words in length.

CERTIFICATE OF SERVICE

I certify that on February 3, 2025, I filed the foregoing with the District of Columbia Circuit Court of Appeals by using the Court's CM/ECF system. I further certify that all party participants are members of the CM/ECF system and that the system will accomplish service of process.

/s Elissa P. Fudim

ELISSA P. FUDIM

Trial Attorney

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**Homeland
Security**

January 22, 2025

MEMORANDUM FOR THE ACTING ATTORNEY GENERAL

FROM: Benjamine C. Huffman
Acting Secretary

A handwritten signature in blue ink, appearing to be "BCH", written over the signature line.

SUBJECT: DOJ Immigration Officer Authorization

Pursuant to the authority vested in me by Title 8, Chapter 12 of the U.S. Code, including 8 U.S.C. § 1103(a)(4), (6), I hereby authorize the employees of the U.S. Department of Justice listed below to perform the following functions of an immigration officer granted to the Department of Homeland Security by Title 8, Chapter 12, and confer on them the authority to do the same:

- (1) Investigating, determining the location of, and apprehending, any alien who is in the United States in violation of Title 8, Chapter 12 or regulations issued thereunder; and
- (2) Enforcing any requirements of such statutes or regulations.

The intent of this order is to grant to the employees listed below the same authority already granted to the Federal Bureau of Investigation, and this order should be read and understood consistent with that objective.

The list of employees granted this authority is as follows:

- Any law enforcement official in the U.S. Marshals Service;
- Any law enforcement official in the Drug Enforcement Administration;
- Any law enforcement official in the Bureau of Alcohol, Tobacco, Firearms and Explosives;
- Any law enforcement official in the Federal Bureau of Prisons; and
- Any other employee of the Department of Justice who obtains the approval of the Attorney General.

cc:
U.S. Immigration and Customs Enforcement
U.S. Customs and Border Protection



Office of the Attorney General
Washington, D. C. 20530

January 25, 2025

MEMORANDUM FOR LAW ENFORCEMENT OFFICIALS

FROM: THE ACTING ATTORNEY GENERAL *jm*

SUBJECT: Conferral of Immigration Enforcement Authority to Law Enforcement Officials within the Department of Justice

On January 22, 2025, the Acting Department of Homeland Security Secretary authorized law enforcement officials at the United States Marshals Service; the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, Firearms and Explosives; and the Federal Bureau of Prisons to perform the functions of an immigration officer granted to the Department of Homeland Security in Title 8, Chapter 12. Law enforcement officials at those Department of Justice components were thereby granted and conferred the authority to execute those powers and functions of office set forth in that title, including:

1. Investigating, determining the location of, and apprehending (including but not limited to detention and arrest), any alien who is in the United States in violation of Title 8, Chapter 12 or regulations issued thereunder; and
2. Enforcing any requirements of such statutes or regulations.

Therefore, pursuant to my lawful authority as the Acting Attorney General, including but not limited to 28 U.S.C. §§ 509, 510, 533 and 8 U.S.C. § 1103, I hereby consent and approve of the conferral of authority made by the Acting Secretary of Homeland Security on January 22, 2025, and authorize and confer such authority to all law enforcement officials within the United States Marshals Service; the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, Firearms and Explosives; and the Federal Bureau of Prisons.

As the Acting Secretary's memorandum noted and reaffirmed, employees at the Federal Bureau of Investigation have already been lawfully granted such authority and therefore, this memorandum reaffirms that such employees at the Federal Bureau of Investigation have such authority and may and should continue to execute such authority.

This delegation of authority is in addition to any existing authorities conferred upon law enforcement officials and their respective agencies, including but not limited to under Titles 18, 21, 22, 26, and 28 of the United States Code, and their implementing regulations. This memorandum should not be construed to limit any previous conferrals or grants of enforcement authority to law enforcement officials.

cc:

The United States Marshals Service
The Drug Enforcement Administration
The Bureau of Alcohol, Tobacco, Firearms and Explosives
The Federal Bureau of Prisons
The Federal Bureau of Investigation